

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application

I. Claim Rejections under 35 USC §112, paragraph 2

The Examiner has rejected claims 1-9 as being indefinite for failing to particularly out and distinctly claim the subject matter which Applicants regard as the invention. Particularly, the Examiner believes that claim 1 is indefinite “. . ., for the recitation of when and how the tea leaves and the tea powder are wetted simultaneously.”

Applicants respectfully disagree and believe the claims as presented comply with 35 USC §112, paragraph 2. On page 6 of the specification, for example, it is explained that a mixture of tea powder and leaf tea are simultaneously wetted and dried to produce a fabricated tea product that permits rapid release of tea components yielding a beverage with excellent characteristics after infusion. “Simultaneous” means, and as used in the specification, that the powder and leaf mixture is wetted and dried at the same time. The mixture is not wet and later dried since such an interpretation would not mean the steps are “simultaneous”. In view of this, it is requested that the second paragraph rejection be withdrawn and rendered moot.

II. Rejection Under 35 USC §103

The Examiner has, again, rejected claims 1-4 and 9 under 35 USC §103 as being unpatentable over Carns et al., EP Patent Application No. 0910956 (hereinafter, ‘956).

In the rejection, the Examiner maintains, in summary, that the '956 reference describes a method for making a combined tea product with a mixture of tea leaves and tea solids. The Examiner continues by concluding that the method described in the '956 patent coats tea solids onto tea leaves. The Examiner continues to take the position that the reference further teaches that tea concentrate can be sprayed onto tea leaves wherein the leaves are subjected to a drying step. Since the Examiner concludes that spraying and drying (as disclosed in the '956 reference) can either occur simultaneously or in separate steps, the Examiner believes that the '956 reference teaches the invention set forth in independent claim 1 of the present patent application. In fact, as mentioned in the current Office Action, the Examiner incorrectly concludes that the claims include the possibility that the tea leaves and tea powders can be combined after being wetted separately but simultaneously and then dried together. Finally, the Examiner maintains that soluble tea leaves are described in the '956 reference where the same may be mixed with water to produce a resulting mixture that is sprayed over a fluidized bed containing tea leaves.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention, as set forth in independent claim 1, again, is directed to a method for preparing a fabricated leaf tea product comprising the steps of:

- (a) mixing leaf tea with tea solids derived from tea powder to produce a mixture;
and
- (b) simultaneously wetting and drying the mixture to produce the fabricated leaf tea product.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the amount of tea powder mixed with the tea leaf, the moisture content of the fabricated leaf tea product, that the mixing of the leaf tea and tea powder and the simultaneous wetting and drying of the mixture of leaf tea and tea powder occur in a fluidized bed, and that the fabricated leaf tea product can give an infusion under 10-15 seconds with water at a temperature between 80 and 90°C.

In contrast, and as already made of record, the '956 reference is merely directed to a tea bag for ice tea beverages. The '956 reference does not, even remotely, describe a process where tea leaves and tea powder are simultaneously wetted and dried as a mixture. Applicants wish to respectfully point out that the Examiner's interpretation of the claims is not correct. Particularly, a mixture of leaf tea and tea solids is wetted and dry. As set forth in the claims the mixture is treated and this is not possible using the Examiner's interpretation of the claimed language. The '956 reference, again, is merely directed to spraying tea concentrate onto tea leaves. No mixture of tea leaf and tea powder is made wherein the resulting mixture is simultaneously wetted and dried as claimed in the present invention. In fact, the reference describes thermally treating tea leaves then combining the thermally treated leaves with soluble tea solids. No wetting step and no drying step to a mixture are simultaneously required or suggested. Moreover, the examples provided herein demonstrate that treatment which is not simultaneous teaches away from the claimed invention and results in an inferior product. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the '956 reference. Therefore, a *prima facie* case of obviousness has not been established and the rejection made under 35 USC §103 should be withdrawn and rendered moot.

III. Rejection Under 35 USC §103

The Examiner has maintained the rejection of claims 5-8 under 35 USC §103 as being unpatentable over Carns et al., EP 0910956 A1 (hereinafter, '956) in view of Menzi, U.S. Patent No. 6,056,949 (hereinafter, '949). In the rejection, the Examiner maintains, in summary, that the '956 reference is being applied to claims 1-4 and 9 as previously discussed. The Examiner maintains that the '956 reference describes a method for combining tea product with a mixture of tea leaves and tea solids wherein the Examiner acknowledges that the '956 reference fails to specifically describe or suggest any temperatures consistent with those claimed in the present invention.

Again, and in an attempt to cure the vast deficiencies of the '956 reference, the Examiner relies on the '949 reference and notes that the reference teaches a process of making granulated flavorings including tea flavors by using a fluidized bed having air temperatures for coating and drying in the range from about 30-80°C. The Examiner further maintains that the '949 reference describes spraying as a method of coating the flavor on to a base material when the temperature of the fluidized bed being used is kept relatively constant so that drying and coating runs in a uniform rate. In view of such a conclusion, the Examiner maintains that the rejection to claims 5-8 under 35 USC §103 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is, again, the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1, as presented, is directed to a method for preparing a fabricated leaf tea product comprising the steps of:

- (a) mixing leaf tea with tea solids derived from tea powders to produce a mixture;
and
- (b) simultaneously wetting and drying the mixture to produce the fabricated leaf tea product.

Dependent claim 5 further limits the simultaneous wetting and drying step in that the mixture is wetted by spraying hot water on to the fluidized bed. Claim 6 further limits the spraying of the hot water in that the hot water is supplied at a temperature range from about 30 to about 60°C. Claims 7-8 specifically describe the processing temperatures of the fluidized bed employed.

In contrast, and as already made of record, the '956 reference is directed to a tea bag for ice tea. The tea bag for ice tea comprises tea leaves and dried soluble tea solids that can be immersed in cold water to produce a beverage having a theaflavin content of at least 25% of the theaflavin content of a standard tea beverage. The method for preparing the iced tea bag described in the '956 reference is clear. Specifically, tea leaves alone are treated at a temperature of at least 80°C. The treated tea leaves are then (after being treated at 80°C) combined with tea solids to provide a mixture with about 30 to about 95% by weight tea leaves and with about 5% to about 70% by weight dried, soluble tea solids. The mixture is then packaged in the tea bag. There is no teaching whatsoever in the '956 reference that even remotely suggests the simultaneous wetting and drying of a mixture of tea leaf and tea powder as claimed in the present invention.

The '949 reference, again, does not cure any of the vast deficiencies of the '956 reference since the '949 reference is directed to a process for the preparation of spherical or substantially spherical aromatic and odoriferous granulated material which

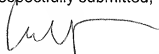
is free flowing. Again, the process described requires fluidizing a core material in an air fluidized bed by introducing air into a rotor-granulator to cause the material to be fluidized by air and the rotor. Flavorant or odorant emulsion is then sprayed below the surface of the fluidized core material wherein the flavorant or odorant emulsion is granulated in fluidized core material. Column 2 at lines 49-51 merely mentions air temperatures that are employed to make mechanically stable flavorant and odorant granulates having a narrow particle size distribution. The combination of the '956 reference and the '949 reference does not, even remotely, describe a process where a mixture of tea leaf and tea solids is simultaneously wetted and dried to produce a fabricated leaf tea product. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. Therefore, a *prima facie* case of obviousness as required under 35 USC §103 has not been established and the rejection made under the same should be withdrawn and rendered moot.

Applicants submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

Applicants further submit this invention is ready for appeal. Applicants, however, welcome suggestions from the Examiner so that the application may pass to issue and the extreme expense of an appeal may be avoided.

In the event the Examiner has any questions concerning the present patent application, the Examiner is kindly invited to contact the undersigned at his or her earliest convenience.

Respectfully submitted,



Edward A. Squillante, Jr.
Registration No. 38,319
Attorney for Applicant(s)

EAS/pod
(201) 894-2925